

Congress of the United States
House of Representatives
Washington, DC 20515-3221

November 30, 2021

HOUSE ARMED SERVICES
COMMITTEE
SUBCOMMITTEE ON CYBER, INNOVATIVE
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SUBCOMMITTEE ON WORKFORCE PROTECTIONS
HOUSE PERMANENT SELECT
COMMITTEE ON INTELLIGENCE

The Honorable Kathy Hochul
Governor of New York State
New York State Capitol
Albany, NY 12224

Dear Governor Hochul:

I write to you today requesting you take action to cease a New York State Department of Transportation (DOT) policy that severely inhibits the deployment of fiber optic cable in rural areas of our state. As you stated in your September 2021 announcement of New York State's mapping survey, "High-speed internet is the great equalizer in today's world because it is essential in accessing basic services and information that we all need in our daily lives".¹ I could not agree more regarding the importance of high-speed internet access, especially in rural communities. Unfortunately, the policy currently in place at your DOT is not aligned with your often stated goal of ensuring all New Yorkers have this critical access.

Prior to May 1, 2020, the New York State DOT required any entity seeking a highway work permit to complete DOT Form PERM 32, the *Highway Work Permit Application for Utility*.² This form applied to all who sought to perform work along a state highway until introduction of the new DOT Form PERM 75, *Consolidated Application and Permit for Highway Work and Use & Occupancy for Fiber Optic Facilities and Supporting Infrastructure*.³

There are critical differences between the two forms. The PERM 75, which only applies to fiber optic facilities and infrastructure, requires an independently contracted third-party to inspect and survey the state right-of-way and requires the permit applicant to identify the state right-of-way within which the permit applicant's fiber optic facility will be placed. The PERM 32, which applies to all other projects along a state right-of-way, does not require the services of a licensed surveyor for any other entity seeking a highway work permit.

This DOT policy requiring a survey by private land surveyors provided for in PERM 75 unfairly discriminates against deployment of fiber optic cable in rural communities by imposing an undue administrative and financial burden on broadband providers who work towards our goal of

¹ Press Release, Governor Hochul, Governor Hochul Announces Launch of Mapping Survey to Examine Quality and Availability of Broadband Across the State (September 27, 2021)

² PERM 32, New York State Department of Transportation, Highway Work Permit Application for Utility (December 12, 2015)

³ PERM 75, New York State Department of Transportation, Consolidated Application and Permit for Highway Work and Use & Occupancy for Fiber Optic Facilities and Supporting Infrastructure (November 23, 2021)

providing all New Yorkers with high-speed internet, often adding six to nine months of delays to the work permit approval process. The PERM 75 survey oftentimes costs providers upwards of \$5,000 to \$15,000 per mile required for the survey, which creates a competitive disadvantage for companies seeking to deploy fiber in New York in both private and public funding sources. Further, this survey is required even on state rights-of-way with existing facilities in place and dictates that a private contractor must tell the DOT the location of state rights-of-way, which by any measure is something the DOT should already be aware of.

The DOT cites their authority for this discriminatory treatment of fiber optic facility build out as falling under Highway Law §10(24)e and Transportation Corporations Law §7. This is the same language that authorizes the DOT to impose a discriminatory fiber fee on broadband providers and violates Section 253 of the Communications Act of 1934.⁴ However, no language in either section provides for a required independently contracted inspection or places the burden of identifying the state right-of-way within which the fiber optic facility will be placed on the permittee.

I urge you to take immediate action to end this policy that disproportionately impacts rural fiber providers and rural residents and allow our broadband providers to innovate, grow, and continue the drive towards connecting every New Yorker to high-speed internet at prices they can afford.

Sincerely,

A handwritten signature in blue ink, reading "Elise M. Stefanik". The signature is fluid and cursive, with the first name "Elise" and last name "Stefanik" clearly legible.

Elise M. Stefanik
Member of Congress

CC: New York State Department of Transportation Commissioner Marie Therese Dominguez

⁴47 U.S. Code § 253(a)